85-319

Supreme Court, U.S.
FILED
AUG 17 1985
JOSEPH F. SPANIOL, JR.
CLERK

CASE NUMBER

IN THE SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1985

DANIEL L. WOODSIDE, ADMINISTRATOR OF THE ESTATE OF HOBART K. WOODSIDE, PETITIONER

vs

UNITED STATES

NATIONAL DIRECTOR OF VETERAN'S ADMINISTRATION, LYONS VA HOSPITAL AND STAFF

DC 82-1202 AC 85-5163

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT.

DANIEL L. WOODSIDE, EXECUTOR

P. O. BOX 646

MARLTON, NEW JERSEY 08053

(609) 983-3899 (201) 437-6037

QUESTIONS PRESENTED FOR REVIEW FROM OPINIONS AND ORDERS OF DECEMBER 12, 1984, FEBRUARY 13, 1985

1. Does the plaintiff have a prima facie case against Lyons on grounds no medical physician treated HKW for physical disabilities listed in Runnells and autopsy reports, and therefore the only thing that any expert can testify to is HKW had physical ailments that should have been treated?

2. Can a negligence case where no medical doctor is involved because of Dr. Yau dropping HKW as a patient be claimed as a medical malpractice case by Whipple for the sole purpose of getting a dismissal to corrupt justice and cover up murder and mayhem carried out against HKW by Lyons?

3. Did kicking HKW out of Lyons on December 15, 1978 without treatment cause HKW's death on May 7, 1979 and hence satisfy requirements for prima facie case of voluntary manslaughter?

4. Is an expert witness even necessary in a negligence case where the absence of a doctor treating HKW means there are no technical matters from that nontreatment to fall peculiarly within the knowledge of any doctor or anyone else?

5. Is Brotman violating due process talking about experts being necessary to explain things to a jury after Brotman has already ruled this is a nonjury case?

6. Is Brotman violating due process talking about standards of treatment when no treatment was given because of kicking HKW of Lyons VA Hospital?

7. Is Brotman violating due process refusing definitions of experts given in FRCP 702 in deciding that none of the eight experts proposed by Woodside qualify?

8. Is Brotman violating due process dismissing Yau as a defendant only for not responding to a medical emergency and not for a hundred other things that Yau did and which this case turns on?

9. Is Brotman violating due process requiring experts to testify for one side or the other instead of to the facts?

10. Is Brotman violating due process objecting to Jansons and Drumm as experts who have discharge summary reports to give to the courts and decisively settle this case?

11. Is Brotman violating due process misrepresenting that the autopsy

report does not mention letters from Lyons to Conston clearly establishing HKW as a patient of Lyons?

12. Is Brotman violating due process by granting all discovery requests by Whipple and no discovery requests by Woodside after Whipple took over?

13. Does the ten dollar limit on lawyers from Civil War days violate the due process and equal protection provisions of the fourteenth amendment?

14. Is Brotman violating due process and equal protection dismissing this case as a malpractice case when malpractice is never mentioned in the administrative complaint or the district court complaint?

15. Is Brotman violating due process issuing protective orders against discovery to the defendant at the same time Brotman is misrepresenting that Woodside has not fully complied

to all discovery orders of his?

16. Has Brotman violated due process and FRCP 56C by misreprsesenting that there is no genuine issue as to any material fact?

17. Did Brotman violate due process and equal protection refusing to let Woodside amend the complaint as to newly discovered substantive issues clearly admissible by 28 USC 2675b?

18. Did Brotman violate due process by not substituting a master as required by FRCP 53 to replace the eight experts produced by Woodside that he objects to?

19. Did Brotman violate due process readily admitting to the administrative complaint that HKW was kicked out of Lyons and not treated again and that Lyons refused to respond to police call but dismissing the complaint anyway?

20. Has Brotman violated due process by not sending a copy of his March 28, 1983 opinion to Woodside?

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DANIEL L. WOODSIDE, ADMINISTRATOR OF THE ESTATE OF HOBART K. WOODSIDE, PETITIONER

v

UNITED STATES

NATIONAL DIRECTOR OF VETERAN'S ADMINISTRATION, LYONS VA HOSPITAL AND STAFF

DISTRICT COURT OPINIONS DATED

Feb. 16, 1982 Dec. 12, 1984

May 24, 1983 Feb. 13, 1985

May 6, 1983

APPEALS COURT OPINION JULY 26, 1985

JURISDICTIONAL STATEMENT

The Third Circuit Court of Appeals has so far sanctioned such extreme departure from accepted and usual course of judicial procedures by Brotman's District Court in Camden as to call for an exercise of the Supreme Court's power of supervision by 28 USC 1254.

U.S. CONSTITUTIONAL PROVISIONS INVOLVED

Amendment 7

...the right of trial by jury shall be preserved...

Amendment 14

...nor shall any state deprive any person of life, liberty, or property without due process of law nor deny to any person within its jurisdiction the equal protection of the laws.

VIOLATED STATUTES IN COURT ORDERS AND OPINIONS

FEDERAL RULES OF CIVIL PROCEDURES NUMBERS

1	33	61
15,a,b,c	35b	301
16b3,c2	37	401
17	38	701
18a	45	702
26a,b4A1,b4C	52	703
26e2B,f5	53	706
30	56	801
31	60b	803
		806

28 US CODE NUMBERS 2412 and 2675b

STATEMENT OF THE CASE

Complaint filed April 16, 1982 under 28 USC 1346b was a wrongful death action resulting from the voluntary manslaughter of HKW by Lyons VA Hospital kicking HKW out of the hospital December 15, 1978 in violation of statutes clearly establishing his rights to treatment. Lyons refused to treat HKW from then till HKW dropped dead May 7, 1979. Runnells Hospital admitted HKW on December 15, 1978 with multiple and severe physical ailments but was able to keep him for only one week because of lack of jurisdiction. Autopsy showed all of these same severe physical problems degenerated to cause death: pneumonia, hepatic steatosis, epilepsy, chronic pancreatitis, and arteriosclerosis. Dr. Yau refused to respond to a police call to his patient - additional proof of

refusal to treat HKW. Case has been a continuous criminal coverup by the courts ever since the murder and mayhem carried out by Lyons against HKW. Simandle answered one of five discovery lists from Woodside and then Hammill called a pre-trial conference December 6, 1982 and ordered a stop to all discovery after that - more concealment of most material facts in this case. Brotman dismissed the principals in the murder of HKW: Yau, Nair, Taylor, and Conary on court order May 24, 1983 giving only as a reason that only the U.S. can be sued by statute. Brotman then dismissed most of the issues claiming sovereign immunity to subject matter - the actions of a dictatorship. Woodside filed an amendment to the complaint on September 9, 1983 under 28 USC 2765b on newly discovered issues copied from the Lyons medical records produced by the defendants just a few months ear-

lier. As typical of the criminal coverup of the murder and mayhem carried out by Lyons against HKW, Brotman dismissed this one and only substantive amendment stating only that he was arbitrarily and capriciously limiting this case to the administrative complaint even though that judicial discretion violated many rules of procedure and made a total mockery of justice in this case. Final summary sheet by Dr. Jansons at Runnells readily proves Woodside's entire case and was offered to Brotman as the report on HKW by this doctor, but was refused because Brotman says doctor would need subpoena. Brotman totally ignores all motions and paperwork by Woodside as more criminal coverup. Reports from both Runnells and autopsy make repeated references to Lyons despite Brotman's misrepresentations to the contrary. Interrogatories and autopsy from Conston are detailed reports

from Conston to the court. Despite Woodside supplying names of three expert witnesses and their reports to the courts - Brotman dismissed this case anyway on February 13, 1985 in the ultimate criminal coverup in this case.

CONCLUSION

After review on certiorari, the petitioner respectfully requests this case be returned to district court for trial for all of the reasons contained herein.

AUGUST 9, 1985 Dr Daniel L. Woodside

DANIEL L. WOODSIDE
Executor

ARGUMENTS ON QUESTIONS OF SAME NUMBER

AMPLIFYING REASONS FOR CERTIORARI

1. Plaintiff has more than satisfied requirement of experts by producing three medical doctors with original knowledge of Hobart K. Woodside in Dr. Conston, Dr. Jansons, and Dr.

Drumm. Record is clear HKW was kicked out of Lyons without any medical treatment for physical ailments severe enough to gain immediate admission to Runnells Hospital. Dr. Yau was so obsessed that all of HKW's problems were mental that Yau never did diagnose nor treat any physical problems. Clearly, Woodside has a prima facie negligence case against Lyons because there is no medical doctor to prove malpractice against.

2. Whipple readily admits Dr. Yau dropped HKW as a patient proved by Yau, kicking HKW out of Lyons without treatment and refusing to respond to police call because of being a psychiatrist.

3. Kicking HKW out of Lyons without treatment is clear on the record and a violation of rights by statute to

treatment and thus deliberate murder being criminally covered up by Brotman and Whipple. Medical malpractice is not mentioned in the administrative complaint or district court complaint. With criminal coverup like this, who can believe anything at all that our government does?

4. Kicking HKW out without treatment is clearly negligent because as doctors, Lyons could have easily known of HKW's physical ailments, or might have been known.

5. Refusal to grant jury trial is a violation of seventh amendment rights.

6. Clearly, any stupid idiot can tell that treatment is called for when someone drops dead from untreated ailments. Clearly, this is just one more criminally twisted flaw in

Brotman even asking for an expert.

7. Record shows the five experts at Lyons made all kinds of professional medical decisions about HKW, including kicking HKW out of Lyons. Brotman states nevertheless, that Taylor, Barlys and Conary are not doctors and thus not experts.

8. It was Yau's obsession to treat HKW as a mental patient instead of a medical patient that led directly to HKW's death. Government has very cleverly divested themselves of subject matter jurisdiction of libel and slander claiming sovereign immunity.

9. There are more than sufficient experts to establish the facts of this case despite Brotman's criminally twisted reasoning to the contrary.

10. Subpoenaed witnesses are common to many cases. Jansons and Drumm make

frequent mention to HKW getting kicked out of Lyons, and thus their reports go straight to the heart of negligence in this case.

11. Conston Interrogatories and autopsy clearly establish that HKW was a patient of Lyons that dropped dead with many untreated physical ailments.

12. Such blatant disregard of equal protection under law violates the fourteenth amendment many times.

13. Brotman says repeatedly that Woodside should get a lawyer, and makes repeated references to pro se, and yet Brotman refuses to help Woodside get a lawyer by making an exception to the ten dollar rule or anything else.

14. Administrative complaint states that Lyons refused to treat HKW in 1979 and respond to a medical emergency.

District court complaint mentions wrongful death, constitutional rights. Brotman dismissed all but the administrative complaint earlier which he refused to be substantively amended in violation of 28 USC 2675b as to newly discovered facts, as to negligence and substandard care.

15. Since the medical records of three doctors with original knowledge are available to the court, this is just one more example of the criminal coverup in this case by Brotman falsely using FRCP 37b2C to dismiss a case by misrepresenting FRCP 26f.

16. Facts are that not a single one of the one hundred or so genuine issues in this case has ever been resolved as to material facts because of the criminal coverup by Brotman and Whipple by refusing to do discovery of the murder and mayhem carried out

by Lyons VA Hospital against HKW.

17. Brotman's open refusal to let Woodside do any discovery in this case is in open defiance of FRCP 26f that clearly states that discovery is necessary to get at the material facts of any case.

18. This is just one more example of Brotman's violation of rule one, that rules of procedure shall secure just and speedy determination of all actions and of the Supreme Court ruling that courts shall give the benefit of the doubt to pro se, which Brotman has been doing just the opposite.

19. Brotman refused to admit into evidence the six Moore letters clearly explaining all questions fairly included into the questions of the administrative complaint.

20. Both the February and May orders of

Brotman are explained by the secret court opinion of March-April 1983.

PROOF OF SERVICE

DANIEL LEVER WOODSIDE deposes and says that pursuant to rule 28.4 he served this PETITION FOR CERTIORARI on counsel for respondent by certified mail return receipt, addressed to:

Mary Gibbons Whipple
402 East State Street, Room 265
Trenton, New Jersey 08608

Solicitor General of U.S.
Department of Justice
Washington, D.C. 20530

by depositing same in U.S. Mails at Marlton, New Jersey on August 16, 1985.

Dr Daniel L. Woodside
DANIEL L. WOODSIDE

APPENDIX

EXHIBIT 19

BROTMAN OPINION DECEMBER 12, 1984

Mr. Daniel L. Woodside
P. O. Box 646
Marlton, New Jersey 08053

Mary Gibbons Whipple, Esquire
Assistant U. S. Attorney

402 East State Street
Trenton, New Jersey 08608

Re: Daniel L. Woodside v. National Director of Veterans Administration, et al. - Civil Action No. 82-1202

LETTER OPINION

Dear Litigants:

Presently before the court is a motion by the United States to dismiss this wrongful death action. Plaintiff Daniel L. Woodside is pursuing this matter pro se as administrator ad prosequendum of the Estate of Hobart K. Woodside. Plaintiff raises claims under the Federal Tort Claims Act, 28 U.S.C. § 1346(b), which are based on defendant's alleged failure to provide medical care to the decedent in 1979 and its alleged failure to respond to an emergency call by the police regarding the decedent on May 7, 1979.

Defendant moves to dismiss the com-

plaint and, in the alternative, for summary judgment. Defendant contends that plaintiff has failed to comply with a prior court order to assemble the proofs required in a medical malpractice action. On April 19, 1984, the court entered a pre-trial order requiring plaintiff to identify an expert witness and to provide defendant with a report by such expert by June 30, 1984. The court personally conveyed these same requirements to both parties on April 19, 1984 at the pre-trial discovery conference. Defendant alleges that plaintiff has failed to comply with the court's discovery order. As a result of such non-compliance, defendant argues, plaintiff cannot make out a prima facie case. Accordingly, defendant asks the court to award summary judgment in favor of the government.

Under 28 U.S.C. § 1346(b), federal district courts may review wrongful death

actions against the United States

> caused by the negligent or wrongful act or omission of any employee of the [Federal] Government while acting within the scope of his office or employment, under circumstances where the U.S., if a private person, would be liable to the claimant in accordance with the law of the place where the act or omission occurred.

Plaintiff has sued an agency of the United States on the basis of alleged negligent acts and omissions committed by federal employees in the course of their employment at the Lyons Veterans Administration Hospital in East Orange, New Jersey. Consequently, the substantive rules of tort law governing this case are to be drawn from the law of New Jersey. See Toole v. United States, 588 F.2d 403, 406 (3rd Cir. 1978); Dumansky v. United States, 486 F. Supp. 1078, 1089-90 (D.N.J. 1980).

Under New Jersey law, a plaintiff in a medical malpractice action bears the

burden of proving two major propositions in order to prevail. First, the plaintiff is required to show that a physician has violated recognized standards of medical practice. Second, the plaintiff must demonstrate that the deviation from recognized standards proximately caused the alleged injury. Germann v. Matriss, 55 N.J. 193, 205 (1970). An earlier opinion of the New Jersey Supreme Court declared that "with rare exceptions," the first element of malpractice must be proved by expert testimony, that is, by evidence presented by "competent and qualified physicians." Schueler v. Strelinger, 43 N.J. 330, 345 (1964). Evidence from such an expert witness is required in medical malpractice cases unless "[t]he issue of [the physician's] negligence [is] not related to technical matters peculiarly within the knowledge of a medical practitioner." Tramutola v.

Bartone, 118 N.J. Super. 503, 512-13 (App. Div. 1972). Accord Jones v. Stess, 111 N.J. Super. 283, 287-90 (App. Div. 1970). The rationale behind these rules is clear. The courts have sought to avoid situations in which the jury, for lack of expertise, is forced "to speculate as to whether the procedure followed by a treating physician conformed to the required professional standards." Schueler, supra, 43 N.J. at 345.

This case involved issues of negligence which implicate numerous "technical matters peculiarly within the knowledge of a medical practitioner." The record in this case reveals that the decedent suffered from a variety of ailments, many of which are complex, during the period covered by this action. Certainly laymen are unqualified to decide, on their own, what accepted professional standards of treatment were in this case, and whether

defendant failed to satisfy them. Consequently, the court's ruling requiring plaintiff to obtain and present a medical expert to testify on behalf of the decedent is consistent with New Jersey law.

Plaintiff's position is that he satisfied his obligation to produce a medical expert in papers filed July 3, 1984 by designating Dr. A. S. Conston, the physician who performed an autopsy on Hobart K. Woodside in May 1979. According to plaintiff, the autopsy report itself explains Dr. Conston's credentials and the substance of his proposed testimony at trial. Letter to Assistant U. S. Attorney Mary Gibbons Whipple, June 29, 1984; Brief in Support of Motion to Dismiss, Exhibit A at 1. In his brief in opposition to the motion to dismiss, plaintiff alleges that he also named seven other individuals as proposed expert witnesses in another document

styled "Joint Pre-Trial Order." This document was not approved by the government; nor is it dated. See Brief in Support of Motion to Dismiss, Exhibit A at 3. On the other hand, the government has not objected to this aspect of plaintiff's argument. The court also notes in this regard that plaintiff is pursuing this action pro se and has been treated with generosity in matters of pleading throughout the course of this action. Accordingly, for purposes of this motion, the court will assume that plaintiff proposed all eight potential medical experts in a timely fashion.

Several problems are presented by plaintiff's response to the motion to dismiss. In the first place, plaintiff's list of eight persons in the "Joint Pre-Trial Order" is deficient in several respects. The persons specified include Dr. Conston, Dr. Kin Lui Yau, Dr. Shyama-

sundaran Nair, Mr. Joseph Taylor, Mr. Kenneth Conary, Mr. N. R. Barlys, Dr. M. Jamsens and Dr. Drumm.

Three of the persons named, Taylor, Barlys and Conary, are not medical professionals. Thus, they are plainly unqualified to serve as medical experts. Doctors Yau and Nair were originally named as defendants. Although a May 24, 1983 order of this court dismissed them as defendants (along with Conary and Taylor), both individuals are still blamed by plaintiff for complicity in the wrongdoing of the Veterans Administration. They are therefore clearly unsuitable candidates for testifying as experts in support of plaintiff's claims. In any case, plaintiff has failed to show that these individuals are willing to testify on his behalf.

Dr. Jamsens and Dr. Drumm were apparently employed at the Runnells medi-

cal facility to which Daniel L. Woodside went in December, 1978 after being refused treatment at the Veterans Administration Hospital in East Orange, New Jersey. Plaintiff has failed to present a report as to the proposed testimony of either of these individuals. Instead, plaintiff seems to wish to rely on the reports these two physicians issued based on their examinations of the decedent. Plaintiff has also failed to give the court any concrete evidence, such as affidavits, indicating that these individuals are actually prepared to testify at trial on behalf of the Estate of Hobart K. Woodside. Consequently, Dr. Jamsens and Dr. Drumm are also improper persons to serve as medical experts for the plaintiff.

In its brief, the government opposes the choice of Dr. Conston as plaintiff's expert on several grounds. Defendant

points out that Dr. Conston's autopsy report does not refer to the negligent actions allegedly taken by the defendant or to the connection between such acts and plaintiff's malpractice claims. In particular, defendant contends the autopsy report fails to mention the sole remaining issue in this case, defendant's denial of medical care to the decedent in 1979. Consequently, according to defendant, the autopsy report is insufficient to satisfy standards set by New Jersey law for expert testimony in a medical malpractice case. Memorandum in Support of Motion to Dismiss at 7. The court agrees. The court also notes that plaintiff has failed to demonstrate that Dr. Conston is willing to testify on behalf of the decedent's estate. Thus, Dr. Conston is also an inappropriate candidate for a medical expert in support of plaintiff's case.

Plaintiff has plainly failed to comply with this court's order of April 19, 1984, in that he has not identified and produced a qualified medical expert, who is prepared to testify in support of his case, and who has prepared a report of his proposed testimony as to plaintiff's malpractice claims. Unitl plaintiff satisfies this requirement, his case may not go forward. The court notes that this case has been in litigation for quite some time, and that the court has been extremely generous in accommodating the limited legal experience of the plaintiff, who is appearing pro se.

The court is reluctant to proceed any further with this matter if plaintiff is unable to prepare a case according to the requirements of New Jersey law. Nevertheless, the court realizes that plaintiff may not have fully understood either the full implications of its April

19, 1984 order, or the characteristics of a proper expert medical witness. Accordingly, the court will grant plaintiff an additional thirty days to comply with its order of April 19, 1984. If the plaintiff fails to comply with this extended deadline, for the reasons set forth above, the court will grant summary judgment in favor of the defendant, on the ground that plaintiff is unable to prove certain necessary elements of an action for medical malpractice under New Jersey law.

An appropriate order will be entered.

Very truly yours,

STANLEY S. BROTMAN

SSB:mhg

EXHIBIT 20

BROTMAN ORDER DECEMBER 12, 1984

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

DANIEL L. WOODSIDE, : Civil Action No.

Plaintiff, : 82-1202

v. :

NATIONAL DIRECTOR OF: VETERANS ADMINISTRATION, et al., :

Defendants. : O R D E R

This matter having come before the court on the 21st day of September, 1984; and

The court having considered the submissions of the parties and record in this case; and

For the reasons stated in the court's letter opinion filed this date,

It is on this 12th day of December, 1984, hereby ORDERED that:

1. The plaintiff, within thirty (30) days of this order, must identify to the defendant and the court a qualified medical expert, prepared to testify on plaintiff's behalf;

2. Within the same period, plain-

tiff is to produce for defendant and the court a report by the expert described in item 1., which describes the expert's proposed testimony as to plaintiff's claims; and

3. If plaintiff fails to comply with items 1. and 2. above, the court will grant summary judgment to defendant at the end of the period described above, on the grounds that plaintiff is unable to prove certain necessary elements of an action for medical malpractice under New Jersey law.

No costs.

Stanley S. Brotman
STANLEY S. BROTMAN, U.S.D.J.

ORIGINAL FILED: DECEMBER 12, 1984
ALLYN Z. LITE, CLERK

EXHIBIT 21

BROTMAN OPINION FEBRUARY 13, 1985

Mr. Daniel L. Woodside
P. O. Box 646
Marlton, New Jersey 08053

Mary Gibbons Whipple, Esquire

Assistant U. S. Attorney
402 East State Street
Trenton, New Jersey 08608

Re: Daniel L. Woodside v. National Director of Veterans Administration, et al. - Civil Action No. 82-1202

LETTER OPINION

Dear Litigants:

This wrongful death action is brought by plaintiff Daniel L. Woodside pro se as administrator ad prosequendum of the estate of his brother, Hobart K. Woodside. Plaintiff raises claims under the Federal Tort Claims Act, 28 U.S.C. § 1346(b), in connection with the death of his brother. Defendant allegedly failed to provide medical care to the decedent in 1979 and neglected to respond to an emergency call regarding the decedent's health on May 7, 1979.

On April 19, 1984, the court held a pre-trial conference with both parties to this action. Based on the conference,

the court entered a pre-trial order which required plaintiff to identify a medical expert and to provide defendant with the expert's report by June 30, 1984. On August 8, 1984, defendant filed a motion to dismiss, and in the alternative for summary judgment, in which the government alleged plaintiff had failed to comply with the pre-trial order.

In a letter opinion issued December 12, 1984, a copy of which is attached, the court reviewed the case law pertaining to the use of medical experts in medical malpractice cases. The court reaffirmed that its earlier order requiring a medical expert "is consistent with New Jersey law." Letter Opinion at 3. The court's opinion concluded that in a case like this, where the issue of negligence is "related to technical matters peculiarly within the knowledge of a medical practitioner," plaintiff must come

forward with testimony from a medical expert in order to establish a prima facie case of malpractice. Id. at 2-3.

The decision of December 12, 1984 considered each eight persons proposed by plaintiff as medical experts. Based on the submissions of the parties and the record in this case, the court determined that all of plaintiff's candidates failed to qualify as experts, as none of the eight are prepared to testify to technical medical issues raised by plaintiff's claims. Id. at 4-5. Accordingly, the court found plaintiff had not complied with its April 19, 1984 order, and granted plaintiff an additional thirty days to do so. The order issued in connection with the December 12, 1984 decision also stated that if plaintiff did not meet the thirty-day deadline, summary judgment would not be granted in favor of defendant.

The court was well within its power when it warned plaintiff that a judgment would be entered against him and for defendant if he failed to comply with the court's order to produce a medical expert. In the first place, under Fed. R. Civ. P. 37(b)(2)(C), the court may dismiss an action brought by a party who refuses to comply with an order issued pursuant to Fed. R. Civ. P. 26(f), arising out of a discovery conference. Plaintiff has failed to cooperate with this court's order of April 19, 1984 in just such a manner, despite generous extensions of time from the court in recognition of plaintiff's status as a pro se litigant. It is not necessary for the court to invoke these provisions of the federal rules however, as plaintiff's noncompliance is fatal to the merits of his claim. Accordingly, the court has treated defendant's objections to plain-

tiff's noncooperation as a motion for summary judgment.

The standard for granting summary judgment is a stringent one. Rule 56(c), Fed. R. Civ. P., provides that summary judgment may be granted only when the materials of record "show tht there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." See Special Jet Services, Inc. v. Federal Insurance Co., 643 F.2d 977 (3rd Cir. 1981); Ely v. Hall's Motor Transit Co., 590 F.2d 62 (3rd Cir. 1978). In deciding whether an issue of material fact does exist, the ccurt is obligated to view all doubt in favor of the nonmoving party. Tomalewski v. State Farm Insurance Co., 494 F.2d 882 (3rd Cir. 1974); Smith v. Pittsburgh Gage and Supply Co., 464 F.2d 870, 874 (3rd Cir. 1972).

Unless plaintiff obtains a medical

expert, he cannot present facts sufficient to support a claim for medical malpractice under New Jersey law. Absent such factual allegations, defendant is entitled to judgment in its favor, even if all other factual questions are viewed in the light most advantageous to plaintiff.

Since this court's decision and order of December 12, 1984, plaintiff has alleged that Dr. Alfred S. Conston is prepared to testify as his medical expert. Letter to the court from Daniel L. Woodside, December 29, 1984. A letter from Dr. Conston, supplied to the court by the government, plainly shows that the doctor is only willing to appear as a fact witness in this case, and not as a medical expert for plaintiff. Letter to the court from Assistant U. S. Attorney Mary Gibbons Whipple, January 23, 1985, attachment 1.

The court's decision of December 12, 1984 explained to plaintiff the content of, and the rationale for, the medical expert requirement in medical malpractice cases. The opinion also specifically stated that Dr. Conston could not qualify as an expert if he appeared simply to present his autopsy report on Hobart K. Woodside. Letter Opinion at 4. Nevertheless, plaintiff's most recent attempt to have Dr. Conston testify as a medical expert is premised on his willingness to testify concerning his autopsy report. Letter to the court from Assistant U. S. Attorney Whipple, supra, attachment 1.

Plaintiff cannot claim that he has had insufficient time to find a medical expert or that he has failed to do so because the court neglected to make clear the nature of his obligation. Plaintiff has received more than ample time and guidance from the court, in accordance

with its policy to treat with generosity the efforts of pro se litigants. The court is satisfied that plaintiff has been given every opportunity to produce a medical expert and has been thoroughly advised as to the consequences of failure to do so. Accordingly, the court finds that plaintiff has not complied with its order of December 12, 1984 and has failed to make out a prima facie case of medical malpractice under New Jersey law. As a result, and in accordance with the court's December 12, 1984 decision, summary judgment is granted in favor of defendant and the complaint in this action is dismissed. An appropriate order will be entered.

Very truly yours,

STANLEY S. BROTMAN

SSB:mhg

EXHIBIT 22

BROTMAN ORDER FEBRUARY 13, 1985

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

DANIEL L. WOODSIDE, : Civil Action No.

Plaintiff, : 82-1202

v. :

NATIONAL DIRECTOR OF VETERANS ADMINISTRATION, et al., :

Defendants. : O R D E R

This matter having come before the court on defendant's motion for summary judgment; and

The court having considered the submissions of the parties and record in this case; and

For the reasons stated in the court's letter opinion filed this date,

It is on this 12th day of February, 1985, hereby ORDERED that defendant's motion for summary judgment is GRANTED and the plaintiff's complaint is DISMISSED.

No costs.

Stanley S. Brotman
STANLEY S. BROTMAN, U.S.D.J.

ORIGINAL FILED: FEBRUARY 13, 1985
ALLYN Z. LITE, CLERK

EXHIBIT 23

THIRD CIRCUIT ORDER JULY 26, 1985

UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

NO. 85-5163

DANIEL L. WOODSIDE, ESQ. Pro Se
H. K. WOODSIDE, Administrator

Appellant

v.

NATIONAL DIRECTOR OF VERTERAN's ADMINISTRATION, U.S.A.; UNITED STATES; NATIONAL DIRECTOR OF VA; EAST ORANGE DIRECTOR OF VA; LYONS, DIRECTOR OF VA; EDWARD J. FITZPATRICK; DR. YAU, DR. NAIR; JOSEPH TAYLOR; N. R. BARLYS; KENNETH CONARY; and other VA personnel people having responsibilities for Hobart K. Woodside; United States Postmaster General; U.S. Postal Service; Leonard Crandley; Martin Nathanson; Postmaster Elwood Pryor, other Post people having responsibilities for Hobart Woodside's mail

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On Appeal from the United States District Court for the District of New Jersey
(C. A. No. 82-1202)
(Honorable Stanley S. Brotman)

Submitted Under Third Circuit Rule 12(6)
July 10, 1985

Before: ADAMS, GARTH and BECKER,
Circuit Judges

JUDGMENT ORDER

After considering the contentions raised by appellant, it is

ADJUDGED AND ORDERED that the judgment of the district court be and is hereby affirmed.

Costs taxed against appellant.

BY THE COURT,

Arlin M. Adams
Circuit Judge
ATTEST:

M. Elizabeth Ferguson
Chief Deputy Clerk

DATED: July 26, 1985

EXHIBIT A

COMPLAINT PAGE 1

UNITED STATES DISTRICT COURT

for the

District of Camden, New Jersey

Plaintiff	Civil Action No. 82-1202
Daniel L. Woodside	Jury Demand
Esq pro se	
H. K. Woodside Admin-	
istrator	
P.O. Box 237	Complaint
Marlton, New Jersey	Pain, suffering,
08053	and mental anguish
v	Constitutional
Defendant	Rights
National Director of	Lible and slander
Veteran's Adminis-	Wrongful Death
tion	

Plaintiff complaining of the defendant says: (with 60 days to reply)

1. Hobart K. Woodside (hereafter referred to as HKW) did locate in YMCA Plainfield after 6-76 hospital discharge with no property except clothes that he was wearing. By not accounting for any property of HKW upon two admissions, VA made them-

selves accessory before the fact to grand larceny of all of property of HKW by parties unknown. The VA thus violated fourteenth amendment rights by depriving HKW of prperty without due process.

2. VA has no records of psychotherapy.
3. Alleged VA psychotherapy was faulty because of not including other family members.
4. VA did lible and slander HKW by failing to describe alleged psychotic manifestations.
5. VA did lible and slander HKW by failing to prove alleged suicidal or homocidal ideations as charged. HKW never hurt a flea in all of his life.

EXHIBIT I

BROTMAN OPINION FEBRUARY 16, 1982

Mr. Daniel L. Woodside
P. O. Box 237
Marlton, New Jersey 08053

Jerome B. Simandle, Esquire

Assistant U. S. Attorney
402 East State Street, Room 265
Trenton, New Jersey 08608

Re: Woodside v. National Director of Veteran's Administration - Civil Action No. 82-1202

LETTER OPINION

Dear Litigants:

This is a wrongful death action brought by plaintiff as administrator ad prosequendum of Hobart K. Woodside's estate. Plaintiff is trying the action pro se. Jurisdiction, which is currently a matter of dispute, is allegedly based on the Federal Tort Claims Act, 28 U.S.C. § 1346(b).

Although plaintiff asserts a number of different requests in his moving papers, it appears that his desired relief is actually a reversal of Judge Hammill's letter order dated December 8, 1982. The effect of that order was to place a moratorium on discovery until a decision is rendered by this court on

defendant's upcoming motion to dismiss the case. Since plaintiff is proceeding pro se, we will give him the benefit of the doubt when interpreting any ambiguities that arise in his moving papers. See Haines v. Kerner, 404 U.S. 519 (1972); Weaver v. Wilcox, 650 F.2d 22, 26 (3rd Cir. 1981).

In reviewing a magistrate's order under 28 U.S.C. § 636, the district court must determine whether such a ruling was "clearly erroneous or contrary to the law." 28 U.S.C. § 636(b)(1)(A). Plaintiff submitted papers in support of his motion (although most of the language in those papers consists of unsupported and ill-founded personal attacks on the magistrate). His only reason for opposing the moratorium on discovery, however, is his desire to conclude this case as soon as possible. While the rapid conclusion of any action is a desirable

goal, it must also be tempered with the realities inherent in litigation. One of those realities is the cost of conducting discovery.

The magistrate is entitled to exercise his discretion when formulating the discovery and pretrial schedule. Fed. R. Civ. P. 16. In this instance he apparently felt that the most efficient and economical method of proceeding was to postpone discovery until after defendant's motion was decided. Since the return date of said motion is February 18, 1983, there would be little harm imposed on plaintiff. Furthermore, it appears that plaintiff made no objection to the moratorium at the time it was initially proposed, and his current objection to such order was filed out of time. (An appeal of a magistrate's order must be filed with the district court within ten days after being served with a

copy of such order.) See General Rule 40, Rules of the United States District Court for the District of New Jersey; 28 U.S.C. § 636(b) (1) (A).

Considering the above facts and also taking into account the minimal effect the short delay will have on plaintiff, we hereby affirm the magistrate's order placing a moratorium on all discovery until after defendant's motion to mismiss has been decided.

Very truly yours,

STANLEY S. BROTMAN

SSB:mhg

ORIGINAL FILED: FEBRUARY 16, 1982
ALLYN Z. LITE, CLERK

EXHIBIT L

BROTMAN ORDER MAY 24, 1983

UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

DANIEL L. WOODSIDE, : Honorable Stanley S. Brotman
Plaintiff, :
v. : Civil Action No. 82-1202

NATIONAL DIRECTOR OF VETERANS ADMINISTRATION, et al., : AMENDED ORDER

Defendants.

This matter having been brought before the court on the 6th day of May, 1983; and

The court having considered the brief, affidavits and oral argument; and

For the reasons stated in the court's opinion entered on the record that day (Stephen J. Daner, Official Court Reporter),

IT IS on this 24th day of May, 1983, hereby

ORDERED that the motion by defendants Director of the Veterans Administration Medical Center, East Orange; Lyons Director of Veterans Administration; Dr. Kin Lui Yau; Dr. Shyamasundaran Nair; Mr. Joseph Taylor; and Mr. Kenneth Conary to dismiss all claims asserted against them is GRANTED.

No costs.

Stanley S. Brotman
STANLEY S. BROTMAN
United States District Judge

FILED: MAY 24, 1983
ALLYN Z. LITE, CLERK

EXHIBIT P

BROTMAN ORDER MAY 6, 1983

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW JERSEY

DANIEL L. WOODSIDE, : Civil Action No. 82-1202
Plaintiff, :

v. :

NATIONAL DIRECTOR OF VETERANS ADMINISTRATION, et al., :

Defendants. : O R D E R

This matter having been brought before the court on the 18th day of February, 1983; and

The court having considered the brief of defendant and oral argument (no brief was filed on behalf of the plaintiff); and

For the reasons stated in the

court's opinion entered on the record March 28, 1983,

It is on this 6th day of May, 1983, hereby ORDERED and DECLARED that the complaint be amended to substitute the United States as the sole defendant in the place of National Director of Veterans Administration; and

It is FURTHER ORDERED that defendant's motion to dismiss plaintiff's claims of libel and slander, accessory before the fact of grand larceny, deprivation of the decedent's constitutional rights and failure to pay benefits is GRANTED for lack of subject matter jurisdiction; and, alternatively, for failure to state a claim upon which relief can be granted; and

It is FURTHER ORDERED that defendant's motion for partial summary judgment is GRANTED as to plaintiff's allegations of negligence due to defendant's

refusal to respond to a police call for a medical emergency on May 7, 1979; and

It is FURTHER ORDERED that defendant's motion to dismiss plaintiff's claims for punitive damages is GRANTED: and

FILED: MAY 6, 1983
AT 4:00 P.M.
ALLYN Z. LITE, CLERK

EXHIBIT U

AMENDMENT COVER SEPTEMBER 9, 1983

UNITED STATES DISTRICT COURT

CAMDEN, NEW JERSEY DISTRICT

Plaintiffs

Daniel L. Woodside

Hobart Woodside

P. O. Box 237

Marlton, New Jersey 08053

v

United States et al

Defendants

Case No. 821202

Jury Demand

Amendment to Complaint

Substandard Care

Negligence

Wrongful Death

PLAINTIFFS complaining of defendants by

28 USC 2675b with 30 days to respond state as negligence and wrongful acts and/or ommissions causing injury and wrongful death all of the following in addition to all other issues:

ORIGINAL FILED: SEPTEMBER 9, 1983
ALLYN Z. LITE, CLERK

EXHIBIT 24

LYONS ORDERS KICKING OUT HKW

MEDICAL CERTIFICATE AND HISTORY

S - "I drink too damn much."

O - Veteran referred by medical clinic for evaluation of veteran's alcohol abuse problem. Veteran states he would like to go to an A.R.U. but since he has been drinking (until today) he is not a candidate for direct admission to that unit. He would accept admission to a psychiatric ward for detoxification if a bed were available.

A - Veteran does not appear to be overly intoxicated and was oriented X3. He is

requesting admission to our facility for alcohol addiction. Data not needed at this time. I have referred veteran to Rummels Hospital for their alcoholism program.

P - Refer to physician.

KENNETH CONARY SWS

NSC-Not a candidate for follow-up at POC.

Cont. Adaptation
Lung Ca. 7/12

Check as appropriate regarding applicant.	YES	NO
A. CAN DRESS AND USE LAVATORY WITHOUT ASSISTANCE	✓	
B. CAN ASCEND AND DESCEND STAIRS	✓	
C. CAN FEED HIMSELF WITHOUT ASSISTANCE	✓	
D. CAN OPERATE A WHEELCHAIR WITHOUT ASSISTANCE (Leave blank if not applicable)		
E. IS INCONTINENT		—
F. IS AMBULANT	✓	
G. IS MENTALLY COMPETENT	✓	
H. NEEDS AN ATTENDANT DURING TRAVEL		—
I. HAS A RELATIVE FOR AN ATTENDANT		—

ITEMS 7 THRU 11 AND ITEM 14 TO E

7. ESTIMATED NUMBER OF DAYS REQUIRED IN A PRIVATE HOSPITAL	8. DOMICILIARY CARE	9. HOSPITALIZATION
	1 ☐ ELIGIBLE	1 ☐ EMERGENT 2 ☐ GENERAL
	2 ☐ INELIGIBLE	3 ☐ URGENT 4 ☑ NOT REQUIRED

10. SIGNATURE OF VA PHYSICIAN	11. DATE SIGNED
[signature]	12/13/78

13. SOCIAL SECURITY NO. 157-14-7097

BEST AVAILABLE COPY

EXHIBIT 25

JANSONS' MEDICAL REPORT

JOHN E. RUNNELLS HOSPITAL OF UNION COUNTY

DATE: 12/21/78

Patient is a 52-year-old, white, male, admitted 12/15/78 for detoxification and rehabilitation. He drinks daily and his symptoms are seizures, blackouts and shakes. Has been hospitalized in Lyons V.A. Hospital 4 times. He is placed on Dilantin 300 mg daily and phenobarbital but he didn't take phenobarbital for three years and Dilantin irregularly because he is drinking. Past medical history reveals varicose veins ligation 1958. In 1967 he sustained cerebral concussion in fight. He was treated in Muhlenberg Hospital and since that time has convulsions.

Physical examination reveals well nourished, alert, male with strong alcohol odor on breath. Walking wide

based, unkempt. Temperature 99, pulse 100, respirations 20, B/P 130/80. Sclerae injected. Skin reveals scaly dermatitis on arms and legs. Arms and legs are covered with tattoos. Teeth in very poor condition. Tongue coated with foul odor. Throat injected. Lungs reveal inspiratory wheezes and rhonchi throughout both lung fields and percussion is some dullness. Heart sounds are regular but distant. Abdomen reveals no pathology. Extremities reveal no pathology. He received regular diet, vitamins, abstinence from alcohol and Dilantin 100 mg three times a day. On 12/18/78 he developed seizure and Valium 10 mg IM was given. He recovered without any injuries.

His laboratory studies reveal SMAC: Glucose 146 mg%, other values normal. Serology non-reactive. Urinalysis normal. CBC reveals hgb 12.4 gm%, red blood cells

3,520,000, white blood count 7,100, differential count reveals polys 73, lymphs 16, monos 5 and eos 6.

Chest x-ray reveals chronic obstructive pulmonary disease, old healed bilateral rib fractures, round back deformity, inreased AP thorax and some old compressions of the mid dorsal area.

Electrocardiogram is normal except for few premature ventricular contractions.

Patient was not living in this county and he was detoxified. He was discharged 12/21/78.

Final diagnosis:

Acute alcohol intoxication.

Alcohol addition.

Convulsions due to trauma or alcohol withdrawal.

Chronic obstructive pulmonary disease.

Anemia due to unknown origin.

Old compressions of dorsal 7,8, 10

of the vertebrae.

Recommendations: Regular diet, abstinence from alcohol and smoking and attend V.A. clinic for physical followup. Patient was sent to Kelly House.

Mirdza A. Jansons, M.D.
Mirdza A. Jansons, M.D.,
MAJ:rjh Senior Staff Physician

WOODSIDE, Hobart #21623
6/19/26 M NONE 12/15/78
HH 2W

Dictated: 1-9-79
Typed: 1-9-79

FINAL SUMMARY

EXHIBIT 17

CONSTON INTERROGATORIES

1. The hospital serves as the County Medical Examiner facility
2. No such listing, Medical Examiner is checked, (not attending)
3. No. Plainfield police
4. Interference with breathing/oxygenation
5. Seizures do not show at autopsy

6. Information from V.A.

8. See Clinical Summary

9. No

10. Police information

12. See report

14. Yes

16. Probably an undertaker, per orders of County Medical Examiner

17. N.J. Medical Examiner Statute

26. Probably 30-45 minutes

27. See report

36. Reported by police

38. See #17

42. See #10

43. Phone call, Dr. Cohn

44. Various reasons possible

48. Height actually measured at autopsy; previous data not known.

49. No

50. Various causes, which result in weight loss

51. Probably old (previous) inflammation;

other causes possible

52. No

53. Depends on cause

54. Hours to days

55. Inflammation (pneumonia)

56. Inflammation (pneumonia)

57. Pneumonia

58. Pneumonia (Cure a clinical problem)

59. Pneumonia may start on one side only

60. Yes

61. Pneumonia

62. Pneumonia

63. No

64. Pneumonia; could be post-mortem change

65. Not stated

66. Nothing

67. Various causes, could even be normal or congenital

68. No

69. No

70. No

71. Chronic pancreatitis not necessarily a reason for hospitalization

72. No relationship

73. Edema

74. No apparent relationship

75. Not usually seen at autopsy

77. See #75

78. Not known

79. No

80. Pneumonia

81. See #59

80. (2)

81. (2) Complex pathophysiologic process

82. (2)

83. Possibly

84. No

85. To a degree, duration not derminable

86. Usually yes

88. No

89. Fluid flow not stopped by dilatation

90. Possibly

92. Possibly

93. No

96. Not examined

97. No

98. Unqualified to comment

99. Unqualified to comment

DATE: FEBRUARY 14, 1985

A. S. Conston, M.D.
A. S. Conston, M.D.
Deputy Medical Examiner
County of Somerset

BETTY MENAPACE
NOTARY PUBLIC OF NEW JERSEY
MY COMMISSION EXPIRES AUGUST 28, 1986

EXHIBIT 14

AUTOPSY COVER

THE SOMERSET HOSPITAL

AUTOPSY REPORT

Full Name (Last Name First)

WOODSIDE, HOBART K.

Attending Physician

MEDICAL EXAMINER

Autopsy No.

A-79-85

Date of Death

5-7-79 1:00 P.M.

Date of Autopsy

5-8-79 8:30 A.M.

Age

53

Date of birth

6-16-26

Autopsy: Complete

Findings and Conclusions:

1. Lesions Contributing Directly to Death:

   Lobar pneumonia, left

II. Lesions Resulting From or Related to Group I:

   Lobular pneumonia, right
   Hepatic steatosis

III. Significant Lesions Not Directly Related to Death:

   Eiplepsy, history (see letter from VA Hospital, dated 6-12-79)
   Personality disorder, history (see letter, above)

IV. Incidental Lesions:

   Chronic pancreatitis
   Arteriosclerosis, mild

Date: July 21, 1979, p.m.
Signed: A. S. Conston, M.D., Pathologist